

Public Comment Response Summary
Revisions to 18 AAC Chapters 75 and 78

February 24, 2017

[Introduction](#)

The Alaska Department of Environmental Conservation's Prevention, Preparedness, and Response Program proposed this package to clarify and update 18 AAC 75 and 18 AAC 78.

[Summary of changes](#)

This packet proposed to update the language in selected sections of the regulations within Title 18 Chapters 75 and 78. The changes are considered housekeeping. The changes eliminate nontank vessel equivalent plans, clarify or align language with related regulations in 18 AAC 75 and add a new section. The new section is for underground storage tanks and provides a cross-reference to the cost recovery regulations in 18 AAC 75.910; which already apply to these operators.

[Organization](#)

This document is organized in a comment/response format and addresses comments made during the formal public review period that ended on 10/23/2016.

Please note that any reference to regulations that does not begin with 18 AAC is assumed to begin as such. For example, 75.410(a) is assumed to be 18 AAC 75.410(a).

Summary of Comments

<p><u>Comment:</u> One commenter expressed support for the amendments. Specifically, the removal of the Nontank Vessel Equivalent Plan requirements.</p>
<p><u>Comment:</u> One commenter expressed concern that the amendments to 75.047(f) and 75.047(i)(3) would result in confusion regarding the term “removed from service” by restricting the meaning to only apply to 75.047(c) and (d).</p> <p><u>Response:</u> 75.047(i) contains definitions that apply to all of section 75.047.</p>
<p><u>Comment:</u> One Commenter expressed concern that the material adopted by reference in 75.065(e)(2) did not include a publication date as required by the Department of Law’s Drafting Manual for Administrative Regulations.</p> <p><u>Response:</u> 75.065(e)(2) references the Tank Inspection, Repair, Alteration, and Reconstruction requirements that were adopted by reference in 75.065(a)(1). 75.065(a)(1) adopts the version with a publication date of December 2001 in accordance with the Department of Law’s Drafting Manual for Administrative Regulations.</p>
<p><u>Comment:</u> One commenter suggested that the amendments to 75.080(o) for piping removed from service after December 30, 2006 created a retroactive provision in the regulations.</p> <p><u>Response:</u> The amended text in 75.080(o) clarifies that the notification requirements apply to piping removed from service after the date the regulations were implemented, December 30, 2006. This requirement was already in place, the amended text is not creating additional or retroactive requirements.</p>
<p><u>Comment:</u> One commenter suggested that including “in any other case” in 75.205(a)(3)(C) and subsequently adding 75.205(a)(3)(D), created unclear regulations. The commenter further recommended switching the order of these two sections.</p> <p><u>Response:</u> The department agrees with this suggestion. This section has been repealed and readopted to avoid confusion.</p>
<p><u>Comment:</u> One commenter noted that the term “primary operational control” is not specifically defined in 18 AAC 75; and requested that a definition be developed.</p> <p><u>Response:</u> Creating a definition for primary operational control is not within the scope of this housekeeping package. The suggestion will be noted for consideration during future updates.</p>
<p><u>Comment:</u> One commenter suggested that the authority given an authorized employee to comply with 75.205(c)(4) be given in writing.</p> <p><u>Response:</u> The language was updated to align with 75.408 and the department’s administrative procedures under 15.030.</p>
<p><u>Comment:</u> One commenter was concerned that the use of the term “member” in 75.205(c)(8) was not specific enough and could allow individuals that otherwise don’t have authority to submit documents.</p> <p><u>Response:</u> This regulation addresses who can sign on behalf of a limited liability company (LLC). The term “member” is from the IRS’s definition of an LLC, “owners of an LLC are called members”. These are the definitions used by the Alaska Department of Commerce, Community, and Economic Development.</p>
<p><u>Comment:</u> One commenter questioned why there was still a reference to nontank vessel plans at 75.400.</p> <p><u>Response:</u> The reference to nontank vessel plans in 75.400 refers to the nontank vessel plans. There are currently two options, the equivalent plan and the streamlined plan. The streamlined plan will be in place so the reference to a nontank vessel plan needs to remain in 75.400.</p>
<p><u>Comment:</u> One commenter was concerned that amendments to 75.408(c)(6) shift the responsibility for distributing documents associated with minor amendments from the department</p>

to the applicant and would place undue burden on the applicant by allowing any interested party to request copies rather than the parties named in 75.408(c)(6).

Response: The amendments to 75.408(c)(6) do not increase the burden on the applicant as these applicants are currently responsible for providing copies to the parties identified in 75.408(c)(6). The amendments merely remove the department as the middleman to streamline the review process.

Comment: One commenter noted that replacing “new installation” with “tanks constructed after May 1992” in 75.990(124) could result in a retroactive provision.

Response: The term “new installation” was left undefined after the 2006 amendments to 18 AAC 75. The secondary containment requirements for installations that were constructed after May 1992 have been in effect since the regulations were implemented in May 1992. This amendment clarifies the implementation date and does not impose any new or additional requirements.

Comment: One commenter was concerned that amendments to 75.990(175) narrowed the applicability of the term “marine structure”, by only applying the term to exploration or production facilities. The commenter suggested that the regulation not be amended.

Response: In 18 AAC 75 the term marine structure is intended to only apply to exploration and production facilities. Narrowing the definition with this amendment further clarifies the use of the term.

Comment: One commenter supported the cost recovery requirement at 78.915, but had questions regarding the implementation of the section, specifically regarding how other state agencies could be reimbursed for response costs.

Response: The intent of this regulation is to insure the department and the state receive proper reimbursement for costs. When recovering costs from a responsible party, the department employs the cost recovery regulations to directly bill the responsible party. The department has procedures in place to recover and distribute costs to the state.

Comment: One commenter suggested that references to documents be updated to the most recently published version.

Response: This is outside the scope of the current regulations package. Future regulations packages could include updates to reference more recently published versions of documents, however those updates would occur on a case-by-case basis.

Comment: One commenter highlighted some potential typographical errors.

Response: The errors are isolated to the PDF version of the regulations and are correct in the official version of 18 AAC 75.